



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MAR 22 2004

VIA FEDERAL EXPRESS

Mr. Blair L. Fortner
Treasurer
Republican Party of Arkansas
1201 West 6th St.
Little Rock, AR 72201

RE: MUR 5428
Republican Party of Arkansas

Dear Mr. Fortner:

On March 9, 2004, the Federal Election Commission found that there is reason to believe the Republican Party of Arkansas ("the Committee") and you, as treasurer, violated the following provisions of the Federal Election Campaign Act of 1971, as amended, and Commission regulations: 2 U.S.C. §§ 432(c) and (d); 433(b)(6); 433(c); 434(b)(1), (2) and (4); 434(b)(3)(A), (B), (C), (D) and (G); 434(b)(5)(A); 434(b)(8); 441a(f); and 441b; and 11 C.F.R. §§ 102.5(a); 102.9(a), (b) and (c); 104.3(a)(4)(iii)(B); 104.3(b)(3)(i); 104.10(b); 104.11; 106.5(a); and 106.5(g). In addition, the Commission made the following alternative reason to believe findings with respect to Committee disbursements reported as made for Jay Dickey: 1) if the disbursements were made for joint federal and non-federal activity, there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. §§ 434(b)(5)(A), 441b and 441a(f) and 11 C.F.R. §§ 104.10(b), 102.5(a), 106.5(a) and 106.5(g); 2) if the disbursements were made for activities that constituted coordinated expenditures, there is reason to believe the Committee and you as treasurer violated 2 U.S.C. §§ 441a(a)(2)(A), 434(b)(6)(B)(i), 441b and 441a(f) and 11 C.F.R. § 102.5(a); and 3) if the disbursements were made for activities that constituted independent expenditures, there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. §§ 434(b)(6)(B)(iii), 441(b) and 441a(f) and 11 C.F.R. § 102.5(a).

The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the conciliation agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

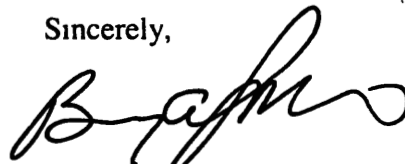
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures

Factual and Legal Analysis w/ attachments
Procedures
Designation of Counsel Form
Conciliation Agreement

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Republican Party of Arkansas and
Blair L. Fortner, as treasurer

MUR: 5428

I. INTRODUCTION

This matter was generated from an audit of the Republican Party of Arkansas undertaken in accordance with 2 U.S.C. § 438(b). The audit covered the period of January 1, 1999 through December 31, 2000. Accordingly, the activity at issue in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act") and the Commission regulations in effect in 1999 and 2000, which precedes amendments to the Act and regulations made by, or as a result of, the Bipartisan Campaign Reform Act of 2002 ("BCRA").

II. FACTUAL AND LEGAL ANALYSIS

A. Misstatement of Financial Activity

Based on the facts and law contained in the Audit Report, the Commission found reason to believe the Republican Party of Arkansas and Blair L. Fortner, as treasurer, ("the Committee") violated 2 U.S.C. §§ 434(b)(1), (2) and (4) for misstating the Committee's 1999 and 2000 financial activity. Attachment A at 1-4.

B. Acceptance of Excessive Contributions

Based on the facts and law contained in the Audit Report, the Commission found reason to believe the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. § 441a(f) for accepting excessive contributions. Attachment A at 4-6 and Attachment B.

C. Failure to Maintain Records of Contributions and Disbursements

Based on the facts and law contained in the Audit Report, the Commission found reason to believe the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C.

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§ 432(c) and (d), 11 C.F.R. §§ 102.9(a) and (c) for failing to maintain records of contributions and 2 U.S.C. §§ 432(c) and (d) and 11 C.F.R. §§ 102.9(b) and (c) for failing to maintain records of disbursements. Attachment A at 6-7 and 11-13. *See also* Attachment A at 13-17.

D. Failure to Itemize Contributions and Transfers

Political committees must disclose the identification of, and the aggregate year-to-date total received from each person who provides any dividend, interest, or other receipt in an amount in excess of \$200 within the calendar year, together with the date and amount of such receipt. 2 U.S.C. § 434(b)(3)(G) and 11 C.F.R. § 104.3(a)(4)(iv).

Based on the facts and the law cited above and contained in the Audit Report, the Commission found reason to believe the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A), (B), (C), (D) and (G) for failing to itemize contributions from individuals, contributions and other receipts from political committees and transfers from affiliated committees. Attachment A at 8 and Attachment C.

E. Acceptance of Prohibited Contributions

Based on the facts and law contained in the Audit Report, the Commission found reason to believe the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. § 441b. Attachment A at 9-10 and Attachment B.

F. Failure to Correctly Report Transfers from Affiliated Committees

Based on the facts and law contained in the Audit Report, the Commission found reason to believe that the Republican Party of Arkansas and Blair Fortner, as treasurer, violated 2 U.S.C. § 434(b)(3)(D) and 11 C.F.R. § 104.3(a)(4)(iii)(B) for failing to correctly report transfers from affiliated committees. Attachment A at 10-11 and Attachment D.

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G. Failure to Correctly Report Disbursements

Based on the facts and law contained in the Audit Report, the Commission found reason to believe that the Republican Party of Arkansas and Blair Fortner, as treasurer, violated 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i) for failing to report disbursements made for operating expenditures in excess of \$200 within the calendar year. Attachment A at 11-12.

H. Underpayment of the Federal Share of Allocable Expenses, Use of Non-Federal Funds to Pay for Federal and Allocable Expenses, Failure to Allocate Certain Expenses, and Failure to Pay for Federal and Allocable Expenses through a Federal Account

The Act prohibits corporations and labor organizations from making contributions or expenditures in connection with an election for federal office and prohibits any political committee from accepting or receiving such prohibited contributions. 2 U.S.C. § 441b(a). The Act also prohibits individuals from making contributions to political committees exceeding \$5,000. 2 U.S.C. § 441a(a)(1)(C).

Under Arkansas state law, individuals, corporations and labor unions may contribute to political parties in unlimited amounts. *See* Ark. Code Ann. §§ 7-6-203(b)(1) and (2), 7-6-201(12) and 7-6-201(5)(Michie 2003). *See also* Edward D. Feigenbaum, James A. Palmer, *Campaign Finance Law 2002, A Summary of State Campaign Finance Laws*, Chart 2A. According to the audit and public records, the Republican Party of Arkansas deposited corporate contributions and contributions in excess of \$5,000 into its non-federal accounts during the period covered by the audit.

Based on the foregoing and the facts and law contained in the Audit Report, the Republican Party of Arkansas and Blair Fortner, as treasurer, violated 2 U.S.C. §§ 441b and 441a(f) and 11 C.F.R. §§ 102.5(a), 106.5(a) and 106.5(g) by making disbursements for federal, or the federal share of allocable, activity from non-federal accounts containing impermissible

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funds, by failing to allocate certain expenses, and by failing to pay for federal and allocable activity from a federal account. The Republican Party of Arkansas and Blair Fortner, as treasurer, also violated 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.10(b) by failing to report or correctly report federal and allocable expenses. Attachment A at 13-17 and 22.

I. Making Excessive Disbursements on Behalf of a Federal Candidate

Based on the facts and law contained in the Audit Report (Attachment A at 17-19), and on the nature of the underlying disbursements for media and consulting, the Commission made the following reason to believe findings, in the alternative:

If the disbursements were made for joint federal and non-federal activity, the Commission found reason to believe that the Republican Party of Arkansas and Blair Fortner, as treasurer, violated 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.10(b) for incorrectly reporting allocable disbursements and 2 U.S.C. §§ 441b, 441a(f) and 11 C.F.R. §§ 102.5(a), 106.5(a) and 106.5(g) by making disbursements for a portion of the federal share of allocable activity from a non-federal account containing impermissible funds, by improperly allocating disbursements for joint activity, and by failing to make payments for allocable disbursements through a federal account.

If the disbursements were made for activities that constituted coordinated expenditures, the Commission found reason to believe that the Republican Party of Arkansas and Blair Fortner, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) for making excessive in-kind contributions on behalf of a federal candidate, 2 U.S.C. § 434(b)(6)(B)(i) by failing to report the contributions; and 2 U.S.C. §§ 441b and 441a(f) and 11 C.F.R. § 102.5(a) by making disbursements for federal activity from a non-federal account containing impermissible funds.

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If the disbursements were made for activities that constituted independent expenditures, the Commission found reason to believe that the Republican Party of Arkansas and Blair Fortner, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iii) for failing to report an independent expenditure made on behalf of a federal candidate, and 2 U.S.C. §§ 441(b) and 441a(f) and 11 C.F.R. § 102.5(a) by making disbursements for federal activity from a non-federal account that contained impermissible funds.

J. Failure to Itemize Outstanding Debts and Obligations

Based on the facts and law contained in the Audit Report, the Commission found reason to believe the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 for failing to itemize outstanding debts and obligations in its 2000 Year End Report. Attachment A at 20 and Attachment E.

K. Failure to Report Bank Depositories

Based on the facts and law contained in the Audit Report, the Commission found reason to believe the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. §§ 433(b)(6) and 433(c) for failing to file an amended statement of organization to list the Committee's bank depositories used during the period covered by the audit. Attachment A at 21.

Attachments

- A. Findings and Recommendations from the Final Audit Report
- B. List of Possible Excessive and Prohibited Contributions
- C. List of Unitemized Contributions from Political Committees and Transfers
- D. List of Incorrectly Reported Transfers from Affiliated Committees
- E. List of Unreported Debts and Obligations

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ATTACHMENT B: POSSIBLE EXCESSIVE AND CORPORATE CONTRIBUTIONS
 (Page 1 of 2)

Possible Excessive Contributions

Contributor	Amount	Documentation	Comments
Chesley Pruett	\$5,000	9/13/99 deposit ticket listing "Pruett" as contributor and deposited 9/14/99.	Reported as contribution from Mrs. Pruett, but no check copy or other writing produced to establish this. Excessive when combined with 5/5/99 contribution from Chesley Pruett which was drawn on a personal, rather than a joint, account
Winthrop Rockefeller	\$5,000	11/5/99 check drawn on account of Winthrop Paul Rockefeller, signed by him with 11/30/99 deposit ticket	No evidence of refund or reattribution Excessive when combined with 5/18/99 \$5,000 contribution
Lloyd Stone	\$5,000	\$ 7,500 check dated 7/16/99 drawn on account of Lloyd Stone, signed by him and deposited on 7/19/99	Although \$5,000 of \$7,500 attributed to Mary Ann Stone on check memo line, no writing signed by her nor was check drawn on joint account. \$5,000 of \$7,500 is excessive when combined with prior \$2,500 contribution by Stone as evidenced by 5/10/99 deposit ticket
	\$6,500	8/3/99 deposit ticket listing "Stone" as contributor and deposited 8/5/99	Excessive when combined with 5/10/99 and 7/16/99 contributions described above

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ATTACHMENT B: POSSIBLE EXCESSIVE AND CORPORATE CONTRIBUTIONS
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Possible Excessive Contributions (cont'd.)

Contributor	Amount	Documentation	Comments
Gary or Robin George	\$1,000	9/22/00 deposit ticket listing "George" as contributor	Excessive to either Gary or Robin when combined with either 9/21/00 \$5,000 contribution reported from Robin George; or 9/21/00 \$5,000 contribution reported from Gary George
Phyllis Kincannon	\$1,000	10/12/00 deposit ticket listing "Kincannon" as contributor	Reported as 10/2 contribution from Jay Kincannon but no check copy or other writing to establish this; other contributions from Kincannon were drawn on a joint account but signed by Phyllis Excessive when combined with \$5,000 contribution check dated 3/10/00 drawn on joint account and signed by Phyllis
Jim or John David Lindsey	\$5,000	10/2/00 deposit ticket listing "Lindsey" as contributor;	Excessive to either Jim or John David when combined with either \$5,000 9/21 reported contribution from Jim or \$5,000 9/21 reported contribution from John David

Possible Corporate Contributions

Contributor	Amount	Documentation	Comments
Potlatch Corporation	\$5,000	3/22/00 check drawn on Potlatch Corp. account	No reporting of contribution by Potlatch's separate segregated fund, Potlatch Employees' Political Fund
National Republican Congressional Committee	\$6,500	11/15/99 deposit ticket of RPA federal account;	NRCC disclosure report shows a \$6,500 non-federal transfer on 11/12/99

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ATTACHMENT C (Page 1 of 2)

**UNITEMIZED CONTRIBUTIONS OR OTHER RECEIPTS
GREATER THAN \$200 FROM POLITICAL COMMITTEES**

Contributor	Date	Amount
American Electric Power Committee for Responsible Government	9/21/00	\$ 2,000
Americans for a Republican Majority (ARMPAC)	10/4/00	\$ 5,000
Asa Hutchinson for Congress Committee	2/18/00	\$ 50
Hutchinson for Senate	7/17/00	\$ 5,000
Keyes for President 2000	4/1/00	\$10,000
OutBack Steakhouse Inc. Political Action Committee	6/15/00	\$ 5,000
Remington Arms Political Action Committee (REMPAC)	9/27/00	\$ 2,000
Southwestern Energy Company PAC	7/12/00	\$ 1,000
Subtotal -- Contributions and Other Receipts		\$30,050
Asa Hutchinson for Congress Committee (Authorized Committee Transfer)	8/21/00	<u>\$50,000</u>
Subtotal -- Transfers from Authorized Cmttee		\$50,000
TOTAL		\$80,050

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ATTACHMENT C (Page 2 of 2)

**INCORRECTLY DISCLOSED TRANSFERS
FROM AFFILIATED COMMITTEES**

Committee	Date	Amount
Republican National Committee	6/16/00	\$ 8,087
	6/14/00	5,819
	6/9/00	12,420
	7/14/00	43,624
	8/8/00	17,099
	8/23/00	50,940
	10/3/00	314
	10/4/00	6,250
	10/27/00	12,500
	10/30/00	9,085
	11/1/00	17,000
	11/1/00	1,037
	11/3/00	21,250
National Republican Congressional Committee -- Expenditures	11/9/00	18,250
	8/14/00	32,144
	9/28/00	<u>13,902</u>
TOTAL		\$269,721

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 Republican Party of Arkansas
 Factual & Legal Analysis
 Attachment D

ATTACHMENT D: INCORRECTLY REPORTED TRANSFER FROM AFFILIATES

Affiliated Committee	Transfer Date	Amount	No YTD Disclosed	Disclosed On Wrong Schedule	Disclosed Wrong Amount
Republican National Committee	10/6/00	\$17,243.00	X		
"	10/12/00	\$17,577.00	X		
"	10/12/00	\$11,750.00	X		
"	10/20/00	\$18,245.00	X	X	
"	10/24/00	\$5,073.00	X	X	
"					
"	10/27/00	\$25,587.00	X	X	
"	10/30/00	\$5,562.00	X	X	
"	10/31/00	\$3,782.00	X	X	
"	11/1/00	\$8,900.00	X	X	
"	11/2/00	\$17,355.00	X	X	
"					
"	11/3/00	\$12,500.00	X	X	
"	11/7/00	\$18,500.00	X	X	
"					
National Republican Congressional Cmte	11/12/99	\$6,500.00		X	
"	9/14/00	\$20,000.00	X		
"	10/5/00	\$33,540.00	X		X
"	10/12/00	\$34,632.00	X		
"	10/19/00	\$39,843.00	X	X	
"					
"	10/26/00	\$42,551.00	X	X	
TOTAL		\$339,140.00	17	12	1

ATTACHMENT E: UNREPORTED DEBT & OBLIGATIONS

Vendor	Invoice Date	Amount	Date Paid
Scott Howell & Company	12/11/00	\$5,000.00	
Hot Springs Convention Center	10/31/00	\$14,108.31	3/21/01
Hot Springs Convention Center	11/1/00	\$188.97	3/28/01
University Printing	11/2/00	\$2,200.00	1/15/01
National Collection Consultants/Southwestern Bell	2/27/01	\$374.05	3/21/01
Outdoor Adventure Tours	10/30/00	\$350.00	3/21/01
Sebastian County Republican Committee	11/3/00	\$1,013.67	3/21/01
EZ Spanish Media	11/7/00	\$775.00	3/21/01
White County Republican Committee		\$1,322.09	3/22/01
TOTAL		\$25,332.09	

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